

EXHIBIT A

ORIGINAL

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

KINDERCARE EDUCATION LLC., a Delaware corporation; and
DOES 1 through 50, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ROCHELLE WESTMORELAND, as an individual and on behalf of all
others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco
400 McAllister St., San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

CGC-19-573125

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Larry W. Lee (SBN 228175)/Diversity Law Group, 515 S. Figueroa St.#1250, LA, CA 90071, 213-488-6555

DATE:
(Fecha)

JAN 24 2019 CLERK OF THE COURT

Clerk, by
(Secretario)

MEREDITH GRIER

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

ORIGINAL

1 Larry W. Lee (State Bar No. 228175)
2 Nicholas Rosenthal (State Bar No. 268297)
3 Kristen Agnew (State Bar No. 247656)
4 Mai Tulyathan (State Bar No. 316704)
5 **DIVERSITY LAW GROUP, P.C.**
6 515 S. Figueroa St., Suite 1250
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8 (213) 488-6555
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13 Hollister, CA 95023
14 (831) 531-4214
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16 Attorneys for Plaintiff and the Class

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SAN FRANCISCO**

19 ROCHELLE WESTMORELAND, as an
20 individual and on behalf of all others
21 similarly situated,

22 Plaintiffs,

23 vs.

24 KINDERCARE EDUCATION LLC., a
25 Delaware corporation; and DOES 1
26 through 50, inclusive,

27 Defendants.

28 Case No. **CGC-19-573125**

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

**(1) VIOLATION OF LABOR CODE §§ 201-
203**

DEMAND OVER \$25,000.00

FILED
San Francisco County Superior Court

JAN 24 2019

CLERK OF THE COURT
BY: *Matthew Goss*
Deputy Clerk

BY Fax

1 Plaintiff Rochelle Westmoreland ("Plaintiff") hereby submits this Class Action
2 Complaint ("Complaint") against Defendant KinderCare Education LLC ("Defendant") and
3 Does 1 through 50 (collectively, "Defendants") on behalf of herself and the class of all other
4 similarly situated former employees of Defendants for all damages and penalties arising from
5 Defendants' violations of the California Labor Code as follows:

6 **INTRODUCTION**

7 1. This class action is within the Court's jurisdiction under California Labor Code §§
8 201-203, 212, and 213, the applicable Wage Orders of the California Industrial Welfare
9 Commission ("IWC").

10 2. This complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees resulting from Defendants': (a) issuance of paycards as
15 final wages without employee authorization or consent, and (b) failure to timely pay all final
16 wages upon separation of employment.

17 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 have engaged in, among other things a system of willful violations of the California Labor Code
19 by creating and maintaining policies, practices, and customs that knowingly deny employees the
20 above stated rights and benefits.

21 5. The policies, practices and customs of defendants described above and below
22 have resulted in unjust enrichment of Defendants and an unfair business advantage over
23 businesses that routinely adhere to the strictures of the California Labor Code.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction over the violations of the California Labor Code §§
26 201-203, 212, and 213.

27 7. Venue is proper in San Francisco County because Defendant does business in San
28 Francisco County, and Plaintiff worked for Defendant in San Francisco County.

PARTIES

8. Plaintiff was employed by Defendant as a Director, until the termination of her employment on January 7, 2019. Plaintiff was and is the victim of the policies, practices, and customs of Defendant complained of in this action in ways that have deprived her of the rights guaranteed to her by California Labor Code, including without limitation, §§ 201-203, 212, and 213.

9. Plaintiff is informed and believes and based thereon alleges Defendant was and is a Delaware Corporation with numerous locations nationwide, including a location in the County of San Francisco. Defendant does business throughout the State of California providing childcare services and early childhood education.

10. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned DOES 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

11. As such, and based upon all the facts and circumstances incident to Defendant's business, Defendant is subject to California Labor Code §§ 201-203, 212, and 213.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants were responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs, and injuries complained of herein.

13. At all times herein mentioned, each of said defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

1 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
2 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
3 joint venturer of, or working in concert with each of the other co-Defendants and was acting
4 within the course and scope of such agency, employment, joint venture, or concerted activity.
5 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
6 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
7 Defendants.

8 15. At all times herein mentioned, Defendants, and each of them, were members of,
9 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
10 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

11 16. At all times herein mentioned, the acts and omissions of various Defendants, and
12 each of them, concurred and contributed to the various acts and omissions of each and all of the
13 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
14 herein mentioned, Defendants, and each of them, ratified each and every act or omission
15 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
16 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
17 damages as herein alleged.

CLASS ACTION ALLEGATIONS

17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
California Code of Civil Procedure § 382. Plaintiff proposes the following Class:

21 a. All former employees who were employed by Defendants in the State of
22 California at any time from January 24, 2016, through the present, whose employment was
23 separated for any reason (voluntary or involuntary), including without limitation, resignation,
24 termination, and/or lay-off, and during their employment was paid their wages via a non-paycard
25 method but upon their separation of employment received their final wages in the form of an
26 paycard (the “Class”).

27 18. Plaintiff further reserves the right to amend such class definition based upon
28 further discovery.

1 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
2 that joinder of all members would be impractical, if not impossible. The identities of the
3 members of the Class are readily ascertainable by review of Defendants' records, including
4 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants:
5 (a) violated Labor Code §§ 212 and 213 by issuing payment of final wages to separated
6 employees in the form of a paycard without authorization, which required employees to incur
7 fees to use, was not fully cashable, and was not usable at all financial institutions, and (b)
8 violated Labor Code §§ 201-203 by failing to timely pay all final wages to separated employees
9 as a result of the issuance of paycards.

10 20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
11 necessary steps to represent fairly and adequately the interests of the Class defined above.
12 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
13 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
14 actions in the past and currently have a number of wage-and-hour class actions pending in
15 California state and federal courts.

16 21. Plaintiff is informed and believes and based thereon alleges that Defendants
17 uniformly administered a corporate policy, procedure, and practice of: (a) issuing payment of
18 final wages to separated employees in the form of a paycard without authorization, which
19 required employees to incur fees to use, was not fully cashable, and was not usable at all
20 financial institutions in violation of Labor Code §§ 212 and 213, and (b) failing to timely pay all
21 wages to separated employees in violation of Labor Code §§ 201-203 as a result of the issuance
22 of paycards.

23 22. Plaintiff is informed and believes, and based thereon alleges, that this corporate
24 conduct is accomplished with the advance knowledge and designed intent to willfully and
25 intentionally fail to comply with the alleged Labor Codes.

26 23. **Common Question of Law and Fact:** There are predominant common questions
27 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
28 concerning Defendants' policy and practice of: (a) violating Labor Code §§ 212 and 213 by

1 issuing payment of final wages to separated employees in the form of a paycard without
2 authorization, which required employees to incur fees to use, was not fully cashable, and was not
3 usable at all financial institutions, and (b) violating Labor Code §§ 201-203 by failing to timely
4 pay all final wages to separated employees as a result of the issuance of paycards.

5 24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of
6 the Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical
7 manner as the Class Members. Plaintiff is a former employee of Defendants. During her
8 employment, she did not authorize her wages to be paid via a paycard. However, upon her
9 termination of employment on or around January 7, 2019, Plaintiff was issued her final wages in
10 the form of a paycard. Plaintiff, however, never gave authorization or consented to receiving her
11 final wages in the form of a paycard. Moreover, Plaintiff was charged a fee to use the card and
12 has been unable to access all the monies contained on the paycard. As such, Plaintiff has not
13 been paid all final wages due upon termination, in violation of Labor Code §§ 201-203.
14 Accordingly, Plaintiff is a member of the Class and has suffered the alleged violations of
15 California Labor Code §§ 201-203, 212, and 213.

16 25. The California Labor Code upon which Plaintiff bases these claims are broadly
17 remedial in nature. These laws and labor standards serve an important public interest in
18 establishing minimum working conditions and standards in California. These laws and labor
19 standards protect the average working employee from exploitation by employers who may seek
20 to take advantage of superior economic and bargaining power in setting onerous terms and
21 conditions of employment.

22 26. The nature of this action and the format of laws available to Plaintiff and
23 members of the Class identified herein make the class action format a particularly efficient and
24 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
25 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
26 advantage since it would be able to exploit and overwhelm the limited resources of each
27 individual plaintiff with their vastly superior financial and legal resources. Requiring each class
28 member to pursue an individual remedy would also discourage the assertion of lawful claims by

1 employees who would be disinclined to file an action against their former and/or current
2 employer for real and justifiable fear of retaliation and permanent damage to their careers at
3 subsequent employment.

4 27. The prosecution of separate actions by the individual class members, even if
5 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
6 to individual class members against the Defendants and which would establish potentially
7 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
8 individual class members which would, as a practical matter, be dispositive of the interest of the
9 other class members not parties to the adjudications or which would substantially impair or
10 impede the ability of the class members to protect their interests. Further, the claims of the
11 individual members of the class are not sufficiently large to warrant vigorous individual
12 prosecution considering all of the concomitant costs and expenses.

13 28. Such a pattern, practice and uniform administration of corporate policy regarding
14 illegal employee compensation described herein is unlawful and creates an entitlement to
15 recovery by Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of
16 the full amount of unpaid wages, including interest thereon, applicable penalties, reasonable
17 attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-203,
18 218.5, and Code of Civil Procedure § 1021.5.

19 29. Proof of a common business practice or factual pattern, which the named Plaintiff
20 experienced and is a representative of, will establish the right of each of the members of the
21 Plaintiff class to recovery on the causes of action alleged herein.

22 30. The Plaintiff class is commonly entitled to a specific fund with respect to the
23 compensation illegally and unfairly retained by Defendants. The Plaintiff class is commonly
24 entitled to restitution of those funds being improperly withheld by Defendants. This action is
25 brought for the benefit of the entire Class and will result in the creation of a common fund.

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201-203

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as though fully set forth herein.

32. Labor Code § 201 provides that all wages earned and unpaid at the time of an employee's discharge are due and payable immediately. Labor Code § 202 provides that, in the case of an employee who resigns or quits, such wages must be paid not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice, in which case the employee must be paid all wages due and earned at the time of quitting. Labor Code § 203 provides that an employer who willfully fails to pay such wages due to an employee who is discharged or quits must pay that employee waiting time penalties in the form of a day's wages up to 30 days until all of the wages owed are paid.

33. As a pattern and practice, Defendants regularly and willfully failed and refused to pay all wages due and earned to discharged employees at the time of their termination, or within 72 hours of employees who quit and/or have resigned, or at the time of termination for those employees who gave 72 hours' notice. More specifically, Defendants violated Labor Code §§ 201-203 by, among other unlawful acts, issuing paycards as final payment of wages to employees who have been discharged and/or resigned without such employees' authorization. As alleged herein, these paycards required fees for usage and did not allow employees to access all of the monies contained on such cards.

34. As such, Defendants had a uniform corporate pattern and practice and procedure regarding the above practices in violation of California Labor Code §§ 201-203.

35. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-203 and 218.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order appointing Plaintiff as the representative of the Class as described herein;
2. For an order appointing Counsel for Plaintiff as class counsel;
3. Upon the First Cause of Action, for damages and/or penalties, as well as attorneys' fees and costs, pursuant to statute as set forth in Labor Code §§ 201-203, and for costs and attorneys' fees, including pursuant to Labor Code § 218.5 and California Code of Civil Procedure § 1021.5;
4. For such other and further relief that the Court may deem just and proper.

DATED: January 24, 2019

DIVERSITY LAW GROUP, P.C.

By:

Larry W. Lee
Kristen M. Agnew
Nick Rosenthal
Mai Tulyathan

Attorneys for Plaintiff and the Class

ORIGINAL

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Larry W. Lee (SBN 228175) DIVERSITY LAW GROUP 515 S. Figueroa Street, Suite 1250 Los Angeles, California 90071 TELEPHONE NO.: (213) 488-6555 FAX NO.: (213) 488-6554 ATTORNEY FOR (Name): Plaintiff Rochelle Westmoreland		CM-010 FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister St. MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civic Center Courthouse		FILED San Francisco County Superior Court JAN 24 2019 CLERK OF THE COURT BY: <i>Massey, L. C.</i> Deputy Clerk
CASE NAME: Rochelle Westmoreland v. KinderCare Education LLC		CASE NUMBER: CGC-19-573125
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
Items 1-6 below must be completed (see instructions on page 2).		

1. Check one box below for the case type that best describes this case:

Auto Tort

Auto (22)
 Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

Business tort/unfair business practice (07)
 Civil rights (08)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)

Employment
 Wrongful termination (36)
 Other employment (15)

Contract

Breach of contract/warranty (06)
 Rule 3.740 collections (09)
 Other collections (09)
 Insurance coverage (18)
 Other contract (37)

Real Property

Eminent domain/Inverse condemnation (14)
 Wrongful eviction (33)
 Other real property (26)

Unlawful Detainer

Commercial (31)
 Residential (32)
 Drugs (38)

Judicial Review

Asset forfeiture (05)
 Petition re: arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)
 Construction defect (10)
 Mass tort (40)
 Securities litigation (28)
 Environmental/Toxic tort (30)
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

Enforcement of judgment (20)

Miscellaneous Civil Complaint

RICO (27)
 Other complaint (not specified above) (42)

Miscellaneous Civil Petition

Partnership and corporate governance (21)
 Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. Large number of separately represented parties
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
 c. Substantial amount of documentary evidence
 d. Large number of witnesses
 e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): One (1)

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 24, 2019

Larry W. Lee

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

Auto Tort

Auto (22)–Personal Injury/Property
Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/
Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–
Physicians & Surgeons
Other Professional Health Care
Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of
Emotional Distress
Negligent Infliction of
Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business
Practice (07)
Civil Rights (e.g., discrimination,
false arrest) (*not civil
harassment*) (08)
Defamation (e.g., slander, libel)
(13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice
(*not medical or legal*)
Other Non-PI/PD/WD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

CASE TYPES AND EXAMPLES

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer
or wrongful eviction*)
Contract/Warranty Breach–Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/
Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open
book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections
Case
Insurance Coverage (*not provisionally
complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse
Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent
domain, landlord/tenant, or
foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal
drugs, check this item; otherwise,
report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court
Case Matter
Writ–Other Limited Court Case
Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims
(*arising from provisionally complex
case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of
County)
Confession of Judgment (*non-
domestic relations*)
Sister State Judgment
Administrative Agency Award
(*not unpaid taxes*)
Petition/Certification of Entry of
Judgment on Unpaid Taxes
Other Enforcement of Judgment
Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified
above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-
harassment*)
Mechanics Lien
Other Commercial Complaint
Case (*non-tort/non-complex*)
Other Civil Complaint
(*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate
Governance (21)
Other Petition (*not specified
above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult
Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late
Claim
Other Civil Petition

EXHIBIT B

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16 Attorneys for Plaintiff and the Class

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

ROCHELLE WESTMORELAND, as an
individual and on behalf of all others
similarly situated,

Plaintiffs,

vs.

KINDERCARE EDUCATION LLC., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CGC-19-573125

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES FOR:**

**(1) VIOLATION OF LABOR CODE §§ 201-
203**
**(2) VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
02/26/2019
Clerk of the Court
BY:DAVID YUEN
Deputy Clerk

Document received by the CA 1st District Court of Appeal.

1 Plaintiff Rochelle Westmoreland (“Plaintiff”) hereby submits this First Amended Class
2 and Representative Action Complaint (“Complaint”) against Defendant KinderCare Education
3 LLC (“Defendant”) and Does 1 through 50 (collectively, “Defendants”) on behalf of herself and
4 the class of all other similarly situated former employees of Defendants for all damages and
5 penalties arising from Defendants’ violations of the California Labor Code as follows:

6 **INTRODUCTION**

7 1. This class and representative action is within the Court’s jurisdiction under
8 California Labor Code §§ 201-203, 212, 213, and 2698, *et seq.*, the applicable Wage Orders of
9 the California Industrial Welfare Commission (“IWC”).

10 2. This complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees resulting from Defendants’: (a) issuance of paycards as
15 final wages without employee authorization or consent, and (b) failure to timely pay all final
16 wages upon separation of employment.

17 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 have engaged in, among other things a system of willful violations of the California Labor Code
19 by creating and maintaining policies, practices, and customs that knowingly deny employees the
20 above stated rights and benefits.

21 5. The policies, practices and customs of defendants described above and below
22 have resulted in unjust enrichment of Defendants and an unfair business advantage over
23 businesses that routinely adhere to the strictures of the California Labor Code.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction over the violations of the California Labor Code §§
26 201-203, 212, 213, and 2698, *et seq.*

27 7. Venue is proper in San Francisco County because Defendant does business in San
28 Francisco County, and Plaintiff worked for Defendant in San Francisco County.

PARTIES

8. Plaintiff was employed by Defendant as a Director, until the termination of her employment on January 7, 2019. Plaintiff was and is the victim of the policies, practices, and customs of Defendant complained of in this action in ways that have deprived her of the rights guaranteed to her by California Labor Code, including without limitation, §§ 201-203, 212, 213, and 2698, *et seq.*

9. Plaintiff is informed and believes and based thereon alleges Defendant was and is a Delaware Corporation with numerous locations nationwide, including a location in the County of San Francisco. Defendant does business throughout the State of California providing childcare services and early childhood education.

10. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned DOES 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

11. As such, and based upon all the facts and circumstances incident to Defendant's business, Defendant is subject to California Labor Code §§ 201-203, 212, 213, and 2698, *et seq.*

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants were responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs, and injuries complained of herein.

13. At all times herein mentioned, each of said defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

14. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or joint venturer of, or working in concert with each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

15. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure § 382. Plaintiff proposes the following Class:

a. All former employees who were employed by Defendants in the State of California at any time from January 24, 2016, through the present, whose employment was separated for any reason (voluntary or involuntary), including without limitation, resignation, termination, and/or lay-off, and during their employment was paid their wages via a non-paycard method but upon their separation of employment received their final wages in the form of an paycard (the “Class”).

18. Plaintiff further reserves the right to amend such class definition based upon further discovery.

1 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
2 that joinder of all members would be impractical, if not impossible. The identities of the
3 members of the Class are readily ascertainable by review of Defendants' records, including
4 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants:
5 (a) violated Labor Code §§ 212 and 213 by issuing payment of final wages to separated
6 employees in the form of a paycard without authorization, which required employees to incur
7 fees to use, was not fully cashable, and was not usable at all financial institutions, and (b)
8 violated Labor Code §§ 201-203 by failing to timely pay all final wages to separated employees
9 as a result of the issuance of paycards.

10 20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
11 necessary steps to represent fairly and adequately the interests of the Class defined above.
12 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
13 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
14 actions in the past and currently have a number of wage-and-hour class actions pending in
15 California state and federal courts.

16 21. Plaintiff is informed and believes and based thereon alleges that Defendants
17 uniformly administered a corporate policy, procedure, and practice of: (a) issuing payment of
18 final wages to separated employees in the form of a paycard without authorization, which
19 required employees to incur fees to use, was not fully cashable, and was not usable at all
20 financial institutions in violation of Labor Code §§ 212 and 213, and (b) failing to timely pay all
21 wages to separated employees in violation of Labor Code §§ 201-203 as a result of the issuance
22 of paycards.

23 22. Plaintiff is informed and believes, and based thereon alleges, that this corporate
24 conduct is accomplished with the advance knowledge and designed intent to willfully and
25 intentionally fail to comply with the alleged Labor Codes.

26 23. **Common Question of Law and Fact:** There are predominant common questions
27 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
28 concerning Defendants' policy and practice of: (a) violating Labor Code §§ 212 and 213 by

1 issuing payment of final wages to separated employees in the form of a paycard without
2 authorization, which required employees to incur fees to use, was not fully cashable, and was not
3 usable at all financial institutions, and (b) violating Labor Code §§ 201-203 by failing to timely
4 pay all final wages to separated employees as a result of the issuance of paycards.

5 24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of
6 the Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical
7 manner as the Class Members. Plaintiff is a former employee of Defendants. During her
8 employment, she did not authorize her wages to be paid via a paycard. However, upon her
9 termination of employment on or around January 7, 2019, Plaintiff was issued her final wages in
10 the form of a paycard. Plaintiff, however, never gave authorization or consented to receiving her
11 final wages in the form of a paycard. Moreover, Plaintiff was charged a fee to use the card and
12 has been unable to access all the monies contained on the paycard. As such, Plaintiff has not
13 been paid all final wages due upon termination, in violation of Labor Code §§ 201-203.
14 Accordingly, Plaintiff is a member of the Class and has suffered the alleged violations of
15 California Labor Code §§ 201-203, 212, and 213.

16 25. The California Labor Code upon which Plaintiff bases these claims are broadly
17 remedial in nature. These laws and labor standards serve an important public interest in
18 establishing minimum working conditions and standards in California. These laws and labor
19 standards protect the average working employee from exploitation by employers who may seek
20 to take advantage of superior economic and bargaining power in setting onerous terms and
21 conditions of employment.

22 26. The nature of this action and the format of laws available to Plaintiff and
23 members of the Class identified herein make the class action format a particularly efficient and
24 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
25 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
26 advantage since it would be able to exploit and overwhelm the limited resources of each
27 individual plaintiff with their vastly superior financial and legal resources. Requiring each class
28 member to pursue an individual remedy would also discourage the assertion of lawful claims by

1 employees who would be disinclined to file an action against their former and/or current
2 employer for real and justifiable fear of retaliation and permanent damage to their careers at
3 subsequent employment.

4 27. The prosecution of separate actions by the individual class members, even if
5 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
6 to individual class members against the Defendants and which would establish potentially
7 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
8 individual class members which would, as a practical matter, be dispositive of the interest of the
9 other class members not parties to the adjudications or which would substantially impair or
10 impede the ability of the class members to protect their interests. Further, the claims of the
11 individual members of the class are not sufficiently large to warrant vigorous individual
12 prosecution considering all of the concomitant costs and expenses.

13 28. Such a pattern, practice and uniform administration of corporate policy regarding
14 illegal employee compensation described herein is unlawful and creates an entitlement to
15 recovery by Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of
16 the full amount of unpaid wages, including interest thereon, applicable penalties, reasonable
17 attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-203,
18 218.5, and Code of Civil Procedure § 1021.5.

19 29. Proof of a common business practice or factual pattern, which the named Plaintiff
20 experienced and is a representative of, will establish the right of each of the members of the
21 Plaintiff class to recovery on the causes of action alleged herein.

22 30. The Plaintiff class is commonly entitled to a specific fund with respect to the
23 compensation illegally and unfairly retained by Defendants. The Plaintiff class is commonly
24 entitled to restitution of those funds being improperly withheld by Defendants. This action is
25 brought for the benefit of the entire Class and will result in the creation of a common fund.

26 ///

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FIRST CAUSE OF ACTION**VIOLATION OF LABOR CODE §§ 201-203****(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as though fully set forth herein.

32. Labor Code § 201 provides that all wages earned and unpaid at the time of an employee's discharge are due and payable immediately. Labor Code § 202 provides that, in the case of an employee who resigns or quits, such wages must be paid not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice, in which case the employee must be paid all wages due and earned at the time of quitting. Labor Code § 203 provides that an employer who willfully fails to pay such wages due to an employee who is discharged or quits must pay that employee waiting time penalties in the form of a day's wages up to 30 days until all of the wages owed are paid.

33. As a pattern and practice, Defendants regularly and willfully failed and refused to pay all wages due and earned to discharged employees at the time of their termination, or within 72 hours of employees who quit and/or have resigned, or at the time of termination for those employees who gave 72 hours' notice. More specifically, Defendants violated Labor Code §§ 201-203 by, among other unlawful acts, issuing paycards as final payment of wages to employees who have been discharged and/or resigned without such employees' authorization. As alleged herein, these paycards required fees for usage and did not allow employees to access all of the monies contained on such cards.

34. As such, Defendants had a uniform corporate pattern and practice and procedure regarding the above practices in violation of California Labor Code §§ 201-203.

35. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-203 and 218.5.

SECOND CAUSE OF ACTION
FOR VIOLATION OF LABOR CODE § 2698, ET SEQ.
(AGAINST ALL DEFENDANTS BY PLAINTIFFS AND ON BEHALF OF THE
AGGRIEVED EMPLOYEES)

36. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 35 as though fully set forth herein.

37. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity seeks penalties on behalf of all Aggrieved Employees from January 18, 2018, through the present for Defendants' violations of Labor Code §§ 201-203, 212, and 213. As identified above, Defendant violated these Labor Code sections by failing to pay Defendants' employees in a way that complies with the Labor Code.

38. Because of Defendant's violations of the Labor Code sections described above, Plaintiff is an "aggrieved employee" as defined in Labor Code section 2699(a). As such, Plaintiff brings this cause of action on behalf of the State of California for violations committed against all similarly situated Aggrieved Employees of Defendant.

39. On or about January 18, 2019, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendant’s violations of the Labor Code sections described above, pursuant to Labor Code section 2699.3.

40. As of the date of the filing of this Complaint, the LWDA has yet to provide notice to Plaintiff as to whether it intends to investigate the Labor Code violations provided for in the written notice.

41. As such, pursuant to Labor Code sections 2699(a) and 2699.3, Plaintiff and the Aggrieved Employees may seek recovery of all applicable civil penalties on behalf of the State of California for Defendants' violations of the Labor Code sections set forth above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order appointing Plaintiff as the representative of the Class as described

1 herein;

2 2. For an order appointing Counsel for Plaintiff as class counsel;

3 3. Upon the First Cause of Action, for damages and/or penalties, as well as
4 attorneys' fees and costs, pursuant to statute as set forth in Labor Code §§ 201-203, and for costs
5 and attorneys' fees, including pursuant to Labor Code § 218.5 and California Code of Civil
6 Procedure § 1021.5;

7 4. Upon the Second Cause of Action, for civil penalties pursuant to California Labor
8 Code § 2698, *et seq.*, and for costs and attorneys' fees; and

9 5. For such other and further relief that the Court may deem just and proper.

10 DATED: February 25, 2019

11 DIVERSITY LAW GROUP, P.C.

12 By: 

13
14 Larry W. Lee
15 Kristen M. Agnew
Nick Rosenthal
Mai Tulyathan
16 Attorneys for Plaintiff and the Class

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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
COUNTY OF LOS ANGELES]
]ss.]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On February 26, 2019, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES** on the interested parties in this action as follows:

Rishi Puri
purir@lanepowell.com
Lane Powell
601 SW Second Avenue, Suite 2100
Portland, Oregon 97204-3158
Attorney for Defendant KinderCare Education LLC

BY MAIL: by placing _____ the original or a true and correct copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the attached mailing list. I am readily familiar with the firm's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address above following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 26, 2019, at Los Angeles, California.

Erika Mejia

EXHIBIT C

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
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13 Attorneys for Defendant
14 KINDERCARE EDUCATION LLC

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF SAN FRANCISCO

17 ROCHELLE WESTMORELAND, as an
18 individual and on behalf of all others similarly
19 situated,

20 Plaintiffs,

21 vs.

22 KINDERCARE EDUCATION LLC., a
23 Delaware corporation; and DOES 1 through
24 50, inclusive,

25 Defendants.

26 Case No. CGC-19-573125

27 **DEFENDANT'S ANSWER TO
28 PLAINTIFF'S UNVERIFIED FIRST
AMENDED COMPLAINT**

29 Complaint Filed: February 26, 2019

30
31 Defendant Kindercare Education LLC ("Kindercare" or "Defendant") hereby answers the
32 unverified First Amended Complaint ("Complaint") of Plaintiff Rochelle Westmoreland
33 ("Plaintiff") as follows:

34 **GENERAL DENIAL**

35 Pursuant to the provisions of California Code of Civil Procedure section 431.30,
36 Kindercare denies, generally and specifically, each and every allegation, statement, and matter,
37 and each purported cause of action contained in the Complaint, and, without limiting the

1 generality of the foregoing, deny generally and specifically that Plaintiff has been damaged in any
2 way at all by reason of any acts or omissions of Kindercare.

3 **ADDITIONAL DEFENSES**

4 In further answer to Plaintiff's Complaint, Kindercare alleges the following additional
5 defenses. In asserting these defenses, Kindercare does not assume the burden of proof as to
6 matters that, pursuant to law, are Plaintiff's burden to prove.

7 **FIRST DEFENSE**

8 **(Failure To State a Cause of Action)**

9 1. As to Plaintiff's Complaint, or any purported cause of action therein alleged,
10 Plaintiff fails to state facts sufficient to constitute claims upon which relief can be granted against
11 Kindercare.

12 **SECOND DEFENSE**

13 **(EstoppeL)**

14 2. Plaintiff, by her conduct, is estopped to assert any cause of action against
15 Defendants.

16 **THIRD DEFENSE**

17 **(Waiver)**

18 3. Plaintiff's Complaint, and each and every cause of action alleged therein, is barred
19 by the doctrine of waiver.

20 **FOURTH DEFENSE**

21 **(Unclean Hands)**

22 4. Plaintiff's Complaint, and each and every cause of action alleged therein, is barred
23 by the doctrine of unclean hands.

24 **FIFTH DEFENSE**

25 **(Excessive Penalties Unconstitutional)**

26 5. The statutory and civil penalties Plaintiff seeks in this case are excessive and thus
27 violate Kindercare's rights under the state and federal Constitutions.

28

SIXTH DEFENSE

(No Willful Violation of Labor Code Section 203)

3 6. Plaintiff is not entitled to any penalty award under section 203 of the California
4 Labor Code since, at all times relevant and material herein, Kindercare did not willfully fail to
5 comply with the compensation provisions of Cal. Labor Code § 200, *et seq.*, but rather acted in
6 good faith and had reasonable grounds for believing that it did not violate the compensation
7 provisions of Cal. Labor Code § 200, *et seq.*

SEVENTH DEFENSE

(Consent)

10 7. To the extent Plaintiff or any putative class member received payment through a
11 paycard, they actually or constructively consented to receive payment in this manner rather than
12 through a paper paycheck.

EIGHTH DEFENSE

(Arbitration)

15 8. To the extent any putative class member signed an arbitration agreement that
16 requires individual arbitration, such a putative class member cannot participate as a class member
17 in the class claims or as an “aggrieved employee” with respect to the representative PAGA claim.

NINTH DEFENSE

(Release)

20 9. The claims any putative class member is barred to the extent that putative class
21 member executed a release of claims.

PRAYER

23 WHEREFORE, Kindercare pray for judgment as follows:

24 || 1. That Plaintiff take nothing by the Complaint;

25 2. That judgment be entered in favor of Kindercare and against Plaintiff on all causes
26 of action;

27 3. That Kindercare be awarded reasonable attorneys' fees according to proof on the
28 ground that this action is groundless and filed without a reasonable basis;

1 4. That Kindercare be awarded the costs of suit incurred herein; and
2 5. That Kindercare be awarded such other and further relief as the Court may deem
3 appropriate and proper.

4

5 Dated: June 26, 2023

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

6

7 By /s/ Thomas R. Kaufman

8 THOMAS R. KAUFMAN
9 PAUL BERKOWITZ
10 RAYMOND NHAN
11 Attorneys for Defendant
12 KINDERCARE EDUCATION LLC

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1 PROOF OF SERVICE

2 Westmoreland v. KinderCare

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 At the time of service, I was over 18 years of age and **not a party to this action**. I am
5 employed in the County of Los Angeles, State of California. My business address is 1901 Avenue
6 of the Stars, Suite 1600, Los Angeles, CA 90067-6055.

7 On June 26, 2023, I served true copies of the following document(s) described as
8 **DEFENDANT'S ANSWER TO PLAINTIFF'S UNVERIFIED FIRST AMENDED
COMPLAINT** on the interested parties in this action as follows:

9 Larry W. Lee
10 DIVERSITY LAW GROUP, P.C.
11 515 S. Figueroa St., Suite 1250 Los Angeles,
12 CA 90071
13 Tel: (213) 488-6555 Fax: (213) 488-6554

William L. Marder
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Suite 200
Hollister, CA 95023
Tel: (831) 531-4214 Fax: (831) 634-0333

14 **X BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
15 document(s) to be sent from e-mail address gschemehorn@sheppardmullin.com to the persons at
16 the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the
17 transmission, any electronic message or other indication that the transmission was unsuccessful.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed on June 26, 2023, at Los Angeles, California.

21 *Gina E. Schemerhorn*
22 Gina E. Schemerhorn